

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
HARRY HERBERT COWAN, JR.)	CASE NO. 05-60028 JPK
KIMBERLY ANN COWAN,)	Chapter 13
)	
Debtors.)	

ORDER REGARDING OBJECTION TO CONFIRMATION
OF CHAPTER 13 PLAN

On July 31, 2006, the Lake Dalecarlia Property Owners Association, by counsel, filed an "Objection to the Chapter 13 Plan". This document asserts that the Association did not received notice of the filing of the debtors' case, and thus did not have an opportunity to file a proof of claim in the case. The document concludes with a prayer for relief that the Court enter "an Order reissuing Debtors (sic) Chapter 13 Plan to include LDPOA as a creditor, for costs, fees and all other appropriate relief in the premises".

The first hurdle for the Association is the fact that the debtors' Chapter 13 plan was confirmed by order of the Court entered on April 22, 2005. An order confirming a Chapter 13 plan is a final appealable order; *In re Wade*, 991 F.2d 402, 406 (7th Cir. 1992); *In re Puckett*, 193 B.R. 842, 845 (Bankr. N.D.Ill. 1996). The precise nature of the relief requested by the Association – "reissuing (the) Chapter 13 Plan to include LDPOA as a creditor" is not clear to the Court, and it is not the Court's function to guess, or derive by inference, the legal basis upon which the Association might premise its request for relief. In this context, the motion fails to conform to the requirements of Fed.R.Bankr.P. 9013, which provides that a "motion shall state with particularity the grounds therefore, and shall set forth the relief or order sought". N.D.Ind.L.B.R. B-9013-1(a) in addition requires that motions initiating contested matters "shall state with particularity – the grounds for the motion". There is no recitation in the Association's motion of a statute or a rule upon which its request for relief is asserted to be based, and the

Court therefore finds that the motion should be denied without prejudice to the filing of a subsequent motion in conformity with requirements of applicable law and rules.

If in fact the relief sought is to set aside the order of confirmation of the plan, the Association should take the following into consideration. First, the time to appeal the confirmation order has long since passed; Fed.R.Bankr.P. 8002(a). If the Association seeks to alter or amend the confirmation order, the time for filing a motion to do so has also long since passed; Fed.R.Bankr.P. 9023; Fed.R.Civ.P. 59(e). If the Association seeks relief from the final order, it may be possible to establish grounds under Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60; however, the Association is reminded of the requirements of N.D.Ind.L.B.R. B-9023-1(a), which requires the filing of a separate supporting brief and appropriate affidavits as an accompaniment to a Rule 9023 or Rule 9024 motion. Under certain circumstances, a creditor may seek revocation of a confirmation order pursuant to 11 U.S.C. § 1330(a), but the requirement that fraud be established under that section is a high threshold burden to meet, and any such request for relief must be accomplished by means of an adversary proceeding; Fed.R.Bankr.P. 7001(5).

Under certain circumstances, the holder of an allowed unsecured claim may seek post-confirmation modification of a Chapter 13 plan; 11 U.S.C. § 1329(a). This avenue offers little relief to the Association in the context of this case. First, although the Association may not have received notice of the initiation of the case in time to file a timely claim under Fed.R.Bankr.P. 3002(c),¹ the claim which has been filed by the Association is designated as a "secured" claim, which places the entity outside the scope of § 1329(a).

For the sake of further elucidation to both the Association and the debtors, the Court

¹ With respect to relief available for untimely claims, review of *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 113 S.Ct. 1489 (1993) and *In re Greenig*, 152 F.3d 631 (7th Cir. 1998) may be instructive to the creditor.

notes that to the extent the Association has a lien recognized under applicable state law, that lien will pass through the debtors' case unaffected by their bankruptcy, and the Association's indebtedness will in all probability not be affected by any discharge granted to the debtors under 11 U.S.C. § 1328 because the obligation to the Association is not "provided for" by the debtors' Chapter 13 plan. The Court also notes that the confirmed plan states the debtors' intent to sell their residence, and if this proposal comes to fruition in this case, the Association will have a lien which will attach to the proceeds of sale.

All of the foregoing is by way of seeking to educate counsel for the Association as to the relatively complex issues which have been raised by the circumstances described in the Association's motion. As stated, the motion in its present form does not properly present any issue to the Court.

IT IS ORDERED that the above-designated motion of Lake Dalecarlia Property Owners Association, filed on July 31, 2006, is denied, without prejudice to that entity's seeking an appropriate form of relief in accordance with applicable law and rules.

Dated at Hammond, Indiana on August 3, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee
Attorney for Creditor